

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

WESTERN DIVISION

INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 98 HEALTH AND )  
WELFARE FUND, by Barbara Lane, as Administrator, INTERNATIONAL )  
UNION OF OPERATING ENGINEERS LOCAL 98 PENSION FUND, by Barbara )  
Lane, as Administrator; INTERNATIONAL UNION OF OPERATING ENGINEERS )  
LOCAL 98 ANNUITY FUND, by Barbara Lane, as Administrator; LOCAL 98 )  
ENGINEERS JOINT TRAINING, RETRAINING, SKILL IMPROVEMENT, SAFETY )  
EDUCATION, APPRENTICESHIP AND TRAINING FUND, by Barbara Lane, as )  
Administrator; CENTRAL PENSION FUND OF THE INTERNATIONAL UNION )  
OF OPERATING ENGINEERS AND PARTICIPATING EMPLOYERS, by Michael R. )  
Fanning, as Chief Executive Officer; and INTERNATIONAL UNION OF )  
OPERATING ENGINEERS LOCAL 98, AFL-CIO, by Eugene P. Melville, Jr., as )  
Business Manager, )

Plaintiffs, )

v. )

COOPER EXCAVATING & TRUCKING, INC.; BRUCE COOPER, II, Individually )  
and as an Officer of COOPER EXCAVATING AND TRUCKING, INC., )

Defendants. )

Civil Action No.  
3:10-cv-30183(MAP)

**JOINT STATEMENT PURSUANT TO  
FED. R. CIV. P. 16(b) AND LOCAL RULE 16.1**

Plaintiffs, by their counsel, Blitman & King LLP, Charles E. Blitman, Esq., and Defendants, by their counsel, Law Offices of Keith A. Minoff, Esq., Keith A. Minoff, Esq., have conferred in compliance with Fed. R. Civ. P. 16(b) and Local Rule 16.1. Attorney Charles E. Blitman on behalf of the Plaintiffs and Attorney Keith A. Minoff on behalf of Defendants agree to the following proposed pretrial schedule:

**LOCAL RULE 16.1(b)(1):**

**I. PROPOSED AGENDA FOR DISCUSSION:**

The parties have discussed an agenda for the Scheduling Conference. The agenda proposed by the parties is as follows:

1. Discussion of the facts of the case;
2. Discovery in the form set forth below;
3. Scheduling dispositive motions; and
4. Settlement posture of the case.

**LOCAL RULE 16.1(b)(3):**

**II. MAGISTRATE JUDGE**

The parties agree to proceed before the Magistrate Judge for purposes of pretrial proceedings and to proceed before the district court judge concerning dispositive motions.

**LOCAL RULE 16.1(c)**

**III. SETTLEMENT**

On November 30, 2010, Plaintiffs presented a written settlement proposal to defendants. Defendants' counsel will confer with his clients and will be prepared to respond to that proposal on or before the December 20, 2010 Rule 16 conference.

**LOCAL RULE 16.1(b)(2):**

**IV. DISCOVERY PLAN AND SCHEDULE**

The parties present the following discovery schedule, agreed upon by both parties, subject to approval by the court:

- (a) Rule 26(a)(1) disclosures prior to the Rule 16 conference;
- (b) Initial written discovery demands, in the form of Requests to Admit, Request for Production of Documents and Notice to Take Depositions, shall be served on or before March 31, 2011;

- (c) All depositions, but not including expert witness depositions, shall proceed after the document review and shall be completed on or before August 1, 2011 (it is anticipated that depositions will not exceed five days);
- (d) Disclosure of expert witnesses, if any, in accordance with Rule 26(a)(2), i.e. at least ninety (90) days prior to the final pretrial conference; and
- (e) All expert and non-expert discovery shall be completed on or before September 15, 2011.

The parties additionally request a further scheduling conference to be held in August 2011 for the purposes of establishing dates for a final pretrial conference and establishing the trial date.

**FED. R. CIV. P. 16(b), FED. R. CIV. P. 26(f) and LOCAL RULE 16.1(b):**

**V. DISCLOSURE OF ELECTRONICALLY STORED INFORMATION**

The parties do not anticipate discovery of substantial electronic information. Most data will be in paper/hard copy format.

The parties agree that, to the extent that materials are produced in electronic format, the producing party will identify the software necessary to access the information. If a producing party has in its possession, custody or control, the same discoverable materials in more than one format, the producing party will identify each of the formats to the requesting party prior to the date on which production of the materials is due and will then produce the materials in the format(s) specified by the requested party.

With respect to electronically-stored information, the parties agree that ESI is to be produced in the form in which it is maintained and used in the ordinary course of business or some other form that is reasonably usable, i.e., in its native format.

The parties have placed a litigation hold on all ESI that is relevant and material to the action, or that may lead to the discovery of admissible evidence, including, but not limited to, contracts, business records, financial information, financial statements, and employee data of Defendant Cooper Excavating & Trucking, Inc. There are no agreements regarding privilege or work product data.

**LOCAL RULE 16.1(d)(2):**

**VI. DISPOSITIVE MOTIONS**

All motions including discovery motions and dispositive motions shall be made on or before November 1, 2011.

**LOCAL RULE 16.1(d)(3):**

**VII. CERTIFICATION**

The LR 16.1(d)(3)(a) and (b) Certifications for the plaintiffs and defendants are attached.

DATED: December \_\_, 2010

DATED: December 13, 2010

LAW OFFICES OF KEITH A. MINOFF, ESQ.

BLITMAN & KING LLP

BY: \_\_\_\_\_

By: \_\_\_\_\_

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The parties have placed a litigation hold on all ESI that is relevant and material to the action, or that may lead to the discovery of admissible evidence, including, but not limited to, contracts, business records, financial information, financial statements, and employee data of Defendant Cooper Excavating & Trucking, Inc. There are no agreements regarding privilege or work product data.

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**VII. CERTIFICATION**

The LR 16.1(d)(3)(a) and (b) Certifications for the plaintiffs and defendants are attached.

DATED: December 14<sup>th</sup> 2010

DATED: December \_\_, 2010

LAW OFFICES OF KEITH A. MINOFF, ESQ.

BLITMAN & KING LLP

BY: 

By: \_\_\_\_\_

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